

MONTANA LEGISLATIVE HISTORY

Chapter 432 19 99

Bill H 203 S _____ Original bill & history ✓ c

H. Committee on Judiciary
Hearing Date(s) 1-15 ✓ c
1-22 ✓ c
_____ c
_____ c
_____ c
Date Out _____ c

S. Committee on Judiciary
Hearing Date(s) 3-11 ✓ c
3-23 ✓ c
_____ c
_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/25 Transmitted to Governor
 3/29 Signed by Governor
 3/30 Chapter Number Assigned
 Chapter Number 200
 Effective Date: 3/29/1999 - All Sections

HB 202 Introduced by Cobb

LC0042 Drafter: B. Campbell

Transfer the Regulation of Banking from the Department of Commerce and the Commissioner of Banking and Financial Institutions to the Office of the State Auditor;...

1/05	Introduced and 1st Reading		
1/05	Referred to Business and Labor		
1/05	Fiscal Note Requested		
1/08	Fiscal Note Received		
1/09	Fiscal Note Signed		
1/10	Fiscal Note Printed		
1/13	Hearing		
1/13	Tabled in Committee	12	7
3/01	Missed Deadline for General Bill Transmittal		

HB 203 Introduced by Shockley

LC0955 Drafter: MacMaster

Revise Certain Criminal Law Provisions Relating to Assault and the Criminal Distribution of Dangerous Drugs;...

1/05	Introduced and 1st Reading		
1/05	Referred to Judiciary		
1/15	Hearing		
1/22	Committee Executive Action--Bill Passed as Amended	15	3
1/23	Committee Report--Bill Passed as Amended		
1/28	2nd Reading Passed	87	12
1/29	3rd Reading Passed	89	7
	Transmitted to Senate		
1/30	Referred to Judiciary		
3/11	Hearing		
3/24	Committee Executive Action--Bill Concurred as Amended	8	0
3/24	Committee Report--Bill Concurred as Amended		
3/26	2nd Reading Concurred	49	0
3/27	3rd Reading Concurred	48	1
	Returned to House with Amendments		
4/13	2nd Reading Senate Amendments Concurred	91	7
4/14	3rd Reading Passed as Amended by Senate	90	9
4/14	Sent to Enrolling		
4/15	Returned from Enrolling		
4/16	Signed by Speaker		
4/16	Signed by President		
4/16	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 432		
	Effective Date: 10/01/1999 - All Sections		

H BILL NO. 203

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN CRIMINAL LAW PROVISIONS RELATING TO ASSAULT AND THE CRIMINAL DISTRIBUTION OF DANGEROUS DRUGS; AND AMENDING SECTIONS 41-5-206, 45-5-201, 45-5-202, 45-9-101, 45-9-103, 45-9-109, 45-9-112, 45-9-113, AND 50-32-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

- 1 (viii) criminal ~~sale~~ distribution of dangerous drugs as defined in 45-9-101;
- 2 (ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 3 (x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the
- 4 acts enumerated in subsections (1)(b)(i) through (1)(b)(x);
- 5 (xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal
- 6 street gang membership, as defined in 45-8-403.
- 7 (2) The county attorney shall file with the district court a petition for leave to file an information
- 8 in district court if the youth was 17 years of age at the time the youth committed an offense listed under
- 9 subsection (1).
- 10 (3) The district court shall grant leave to file the information if the court finds that there is
- 11 probable cause to believe that the youth has committed the alleged offense and that, considering the
- 12 seriousness of the offense and in the interests of community protection, the case should be filed in the
- 13 district court.
- 14 (4) The filing of an information in district court terminates the jurisdiction of the youth court over
- 15 the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the
- 16 district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case
- 17 has been filed in the district court as provided in this section. A case may be transferred to district court
- 18 after prosecution as provided in 41-5-208 or 41-5-1605.
- 19 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime
- 20 enumerated in subsection (1) may be:
- 21 (a) tried in youth court;
- 22 (b) transferred to district court with an offense enumerated in subsection (1) upon motion of the
- 23 county attorney and order of the district court judge.
- 24 (6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)
- 25 and is sentenced to the state prison, the commitment must be to the department of corrections. The
- 26 department shall confine the youth in whatever institution that it considers proper, including a state youth
- 27 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not
- 28 be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities
- 29 must be provided an education consistent with the requirements of the federal Individuals with With
- 30 Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

- (a) alternative facilities do not provide adequate security; and
- (b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 2. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if ~~he~~ the person:

- (a) purposely or knowingly causes bodily injury to another;
 - (b) negligently causes bodily injury to another with a weapon;
 - (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or
 - (d) purposely or knowingly causes reasonable apprehension of bodily injury in another.
- (2) ~~Except as provided in subsection (3), a~~ A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

~~(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both."~~

Section 3. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault -- felony assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if the person purposely or knowingly causes:

- (a) bodily injury to another with a weapon; ~~or~~
- (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- (c) bodily injury to a person less than 14 years of age when the offender is 18 years of age or older.

(3) (a) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222. Subject to the provisions of subsection (3)(b), a person convicted

1 of felony assault under subsection (2)(a) or (2)(b) shall be imprisoned in the state prison for a term not
2 to exceed 10 years or be fined not more than \$50,000, or both, and a person convicted of felony assault
3 under subsection (2)(c) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined
4 not more than \$50,000, or both.

5 (b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony
6 assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay
7 for and complete a counseling assessment as required in 45-5-206(4)."

8
9 Section 4. Section 45-9-101, MCA, is amended to read:

10 "45-9-101. Criminal ~~sale~~ distribution of dangerous drugs. (1) A person commits the offense of
11 criminal ~~sale~~ distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers
12 to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

13 (2) A person convicted of criminal ~~sale~~ distribution of a narcotic drug, as defined in
14 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for
15 a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as
16 provided in 46-18-222.

17 (3) A person convicted of criminal ~~sale~~ distribution of a dangerous drug included in Schedule I or
18 Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a
19 prior conviction for criminal ~~sale~~ distribution of such a drug shall be imprisoned in the state prison for a
20 term of not less than 10 years or more than life and may be fined not more than \$50,000, except as
21 provided in 46-18-222. Upon a third or subsequent conviction for criminal ~~sale~~ distribution of such a drug,
22 the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life
23 and may be fined not more than \$50,000, except as provided in 46-18-222.

24 (4) A person convicted of criminal ~~sale~~ distribution of dangerous drugs not otherwise provided
25 for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year
26 or more than life or be fined an amount of not more than \$50,000, or both.

27 (5) A person who was an adult at the time of ~~sale~~ distribution and who is convicted of criminal
28 ~~sale~~ distribution of dangerous drugs to a minor shall be sentenced as follows:

29 (a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for
30 not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in

46-18-222.

(b) If convicted of the ~~sale~~ distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a ~~sale~~ distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the ~~sale~~ distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such ~~sales~~ distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 5. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to ~~sell~~ distribute. (1) A person commits the offense of criminal possession with intent to ~~sell~~ distribute if ~~he~~ the person possesses with intent to ~~sell~~ distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to ~~sell~~ distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to ~~sell~~ distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 6. Section 45-9-109, MCA, is amended to read:

"45-9-109. Criminal ~~sale~~ distribution of dangerous drugs on or near school property -- penalty --

1 affirmative defense. (1) A person commits the offense of criminal ~~sale~~ distribution of dangerous drugs on
2 or near school property if ~~he~~ the person violates 45-9-101 in, on, or within 1,000 feet of the real property
3 comprising a public or private elementary or secondary school.

4 (2) Except as provided in 46-18-222, a person convicted of criminal ~~sale~~ distribution of dangerous
5 drugs on or near school property:

6 (a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life
7 and

8 (b) may be fined an amount of not more than \$50,000.

9 (3) It is not a defense to prosecution under subsection (1) that the person did not know the
10 distance involved.

11 (4) It is an affirmative defense to prosecution for a violation of this section that:

12 (a) the prohibited conduct took place entirely within a private residence; and

13 (b) no person 17 years of age or younger was present in the private residence at any time during
14 the commission of the offense."

15
16 Section 7. Section 45-9-112, MCA, is amended to read:

17 "45-9-112. Criminal ~~sale~~ distribution of imitation dangerous drug -- penalty. (1) A person commits
18 the offense of criminal ~~sale~~ distribution of an imitation dangerous drug if ~~he~~ the person knowingly or
19 purposely sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any
20 imitation dangerous drug.

21 (2) A person convicted of criminal ~~sale~~ distribution of an imitation dangerous drug to a person 18
22 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may
23 be fined not more than \$50,000.

24 (3) A person convicted of criminal ~~sale~~ distribution of an imitation dangerous drug to a person
25 under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may
26 be fined not more than \$50,000."

27
28 Section 8. Section 45-9-113, MCA, is amended to read:

29 "45-9-113. Criminal possession of imitation dangerous drug with the purpose to sell distribute
30 -- penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with

the purpose to ~~sell~~ distribute if ~~he~~ the person possesses with the purpose to ~~sell~~ distribute any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with the purpose to ~~sell~~ distribute shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than \$50,000.

(3) A person under 18 years of age convicted of a first violation under this section ~~shall be~~ is presumed to be entitled to a deferred imposition of sentence."

Section 9. Section 50-32-405, MCA, is amended to read:

"**50-32-405, Violation -- penalties.** (1) A person commits the offense of failure to report ~~sale or transfer~~ distribution of a precursor to a controlled substance if ~~he~~ the person purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the ~~sale or transfer~~ distribution of a precursor to a controlled substance shall be fined not more than \$10,000 or be imprisoned in the state prison for not more than 10 years, or both."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on January 15, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/15/99 HB 24, HB 135, HB 203, HB 209,
Date Posted: 1/7/99

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 440 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 268}

Closing by Sponsor:

Rep. Stovall made closing statements

{Tape : 2; Side : B; Approx. Time Counter : 268 - 288}

EXECUTIVE ACTION ON HB 135

Motion/Vote: Rep. Kitzenberg moved that HB 135 be PASSED.

Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : B; Approx. Time Counter : 288 - 313}

HEARING ON HB 203

Sponsor:

Rep. Shockley presented HB 203.

{Tape : 2; Side : B; Approx. Time Counter : 313 - 458}

Proponents:

None

Opponents:

None

Informational Testimony:

Elizabeth Horsman, Montana County Attorney's Association

{Tape : 2; Side : B; Approx. Time Counter : 458}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 21}

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 21 - 272}

Closing by Sponsor:

Rep. Shockley made closing statements.

{Tape : 3; Side : A; Approx. Time Counter : 272 - 296}

HEARING ON HB 209

HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 1/15/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	/		
Dan McGee, vice chair	/		
Diana Wyatt, vice chair	/		
Chris Ahner	/		
Shiell Anderson	/		
Paul Clark	/		
Aubyn A. Curtiss	/		
Bill Eggers	/		
Tom Facey	/		
Steven Gallus	/		
Gail Gutsche	/		
Jean Hurdle	/		
Rick Jore	/		
Sam Kitzenberg	/		
Brad Molnar	/		
Mark Noenning	/		
Jim Shockley	/		
Loren Soft	/		
Carol Williams	/		
Cindy Younkin	/		

394

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE

1/15/99

BILL NO. HB 203

SPONSOR(S)

Shockey

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
I	Betsy (Elizabeth) Horsman	MT Atty Gen-Ofc.	Mont. Grand Attorney Association

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

(Rep. Williams and Eggers absent during this action)

{Tape : 1; Side : A; Approx. Time Counter : 426 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 33}

EXECUTIVE ACTION ON HB 203

Motion: REP. GALLUS moved that HB 203 BE PASSED.

Motion/Vote: REP. SHOCKLEY moved that HB 203 BE AMENDED. Motion carried 17-1 with Molnar voting no.

Motion: REP. YOUNKIN moved that HB 203 BE PASSED AS AMENDED.

Substitute Motion: REP. MOLNAR made a substitute motion HB 203.

Substitute Motion failed.

Motion/Vote: REP. SHOCKLEY moved that HB 203 BE PASSED AS AMENDED. Motion carried 15-3 with Jore, McGee, and Molnar voting no.

(Rep. Williams and Eggers absent during this action)

EXHIBIT(2)

{Tape : 1; Side : B; Approx. Time Counter : 33 - 233}

There was a break for committee members; Chairman Robert Clark called the meeting back to order and went over the witness testimony rules.

{Tape : 1; Side : B; Approx. Time Counter : 233 - 298}

HEARING ON HB 292

Sponsor:

Rep. Mangan presented HB 292.

{Tape : 1; Side : B; Approx. Time Counter : 298 - 368}

Proponents:

Bill Fleiner, Montana Sheriffs and Peace Officers Association

{Tape : 1; Side : B; Approx. Time Counter : 368 - 397}

Greg Sukut, Great Falls Housing Authority

{Tape : 1; Side : B; Approx. Time Counter : 397 - 434}

Jerry Williams, Montana Police Protective Association and Butte Housing Authority

{Tape : 1; Side : B; Approx. Time Counter : 434 - 458}

Jeff Beecroft, Great Falls Police Dept.

{Tape : 1; Side : B; Approx. Time Counter : 458 - 494}

Opponents:

Amendments to House Bill No. 203
1st Reading Copy

EXHIBIT 2
DATE 1/22/99
HB 203

Requested by Representative Jim Shockley

For the House Judiciary Committee

Prepared by John MacMaster
January 16, 1999

1. Title, page 1, line 6.

Following: "45-9-113,"

Insert: "46-18-201, 46-18-231,"

2. Page 3, line 24.

Following: "or"

Insert: "or"

3. Page 3, line 25 through line 27.

Strike: "; or" on line 25 through "older" on line 27

4. Page 3, line 28.

Following: line 27

Insert: "(3) A person commits the offense of felony assault if,
when the victim is under 14 years of age and the offender is
18 years of age or older, the offender:

(a) purposely or knowingly causes bodily injury to the
victim;

(b) negligently causes bodily injury to the victim with
a weapon;

(c) purposely or knowingly makes physical contact of an
insulting or provoking nature with the victim; or

(d) purposely or knowingly causes reasonable
apprehension of bodily injury in the victim."

Renumber: subsequent subsections

5. Page 3, line 30.

Strike: "(3) (b) "

Insert: "(4) (b) "

6. Page 4, line 1.

Strike: "(a) or (2) (b) "

7. Page 4, line 3.

Strike: "(2)(c)"

Insert: "(3)"

8. Page 7, line 9.

Following: line 8

Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition.

Reasonable restrictions or conditions may include:

- (i) jail base release;
 - (ii) jail time not exceeding 180 days;
 - (iii) conditions for probation;
 - (iv) payment of the costs of confinement;
 - (v) payment of a fine as provided in 46-18-231;
 - (vi) payment of costs as provided in 46-18-232 and 46-18-233;
 - (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
 - (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
 - (ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
 - (x) community service;
 - (xi) home arrest as provided in Title 46, chapter 18, part 10;
 - (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;
 - (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or
 - (xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).
- (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

- (c) impose a fine as provided by law for the offense;
 - (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;
 - (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;
 - (f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;
 - (g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or
 - (h) impose any combination of subsections (1)(b) through (1)(g).
- (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.
- (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.
- (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.
- (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3), (4) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).
- (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.
- (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.
- (8) If the victim was less than 16 years old, the

imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

{ Internal References to 46-18-201:

41-5-208	45-9-205	46-18-104	46-18-202
46-18-222	46-18-241	46-23-215	53-1-203}

Insert: "Section 10. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3) ~~(4)~~, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person

has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed \$50,000."

{ Internal References to 46-18-231:

46-18-201	46-18-233	46-18-234	46-18-235
46-18-236	46-18-251	61-7-118	61-8-731}"

Renumber: subsequent section

- END -

HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 1/22/99

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Robert C. Clark, chair	☒		
Dan McGee, vice chair	☒		
Diana Wyatt, vice chair	☒		
Chris Ahner	☒		
Shiell Anderson	☒		
Paul Clark	☒		
Aubyn A. Curtiss	☒		
Bill Eggers	☒		
Tom Facey	☒		
Steven Gallus	☒		
Gail Gutsche	☒		
Joan Hurdle	☒		
Rick Jore	☒		
Sam Kitzenberg	☒		
Sam Kitzenberg			
Brad Molnar	☒		
Mark Noenning	☒		
Jim Shockley	☒		
Loren Soft	☒		
Carol Williams	☒		
Cindy Younkin	☒		



HOUSE STANDING COMMITTEE REPORT

January 22, 1999

Page 1 of 5

Mr. Speaker:

We, your committee on Judiciary report that House Bill 203 (first reading copy -- white) do pass as amended.

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

And, that such amendments read:

1. Title, page 1, line 6.

Following: "45-9-113,"

Insert: "46-18-201, 46-18-231,"

2. Page 3, line 24.

Following: "or"

Insert: "or"

3. Page 3, line 25 through line 27.

Strike: "or" on line 25 through "older" on line 27

4. Page 3, line 28.

Following: line 27

Insert: "(3) A person commits the offense of felony assault if, when the victim is under 14 years of age and the offender is 18 years of age or older, the offender:

(a) purposely or knowingly causes bodily injury to the victim;

(b) negligently causes bodily injury to the victim with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with the victim; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in the victim."

Renumber: subsequent subsections

Committee Vote:

Yes 15, No 3.

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SS
2:46
1-22

5. Page 3, line 30.

Strike: "(3)(b)"

Insert: "(4)(b)"

6. Page 4, line 1.

Strike: "(a) or (2)(b)"

7. Page 4, line 3.

Strike: "(2)(c)"

Insert: "(3)"

8. Page 7, line 9.

Following: line 8

Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition.

Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

171425SC.ham

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3), (4) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Insert: "Section 10. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3) (4), 45-5-302(2),

45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed \$50,000."

Renumber: subsequent section

- END -

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 11, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 203, HB 204, HB 209, HB
492, 3/8/1999
Executive Action: HB 371, HB 492

HEARING ON HB 492

Sponsor: REP. HAL HARPER, HD 52, Helena

Proponents: Herb Goodwin, First Special Services Forces
Association
Joe Upshaw, Civilian Aide to the Secretary of the
Army, Veteran of Montana's 163rd Infantry
Regiment

in these activities can be charged with vandalism and destruction of property. How does one place a value on granite that contains the names of people who have fought and died for this country? This is why a separate statute is warranted.

SEN. GRIMES raised a concern that damage may have occurred and a young person could come along later and become liable for all the previous damage that occurred because that person was in the wrong place at the wrong time. As a youngster, he did a few stupid things and later on in life realized what a mistake that was and how much we owe our Veterans. He questioned how this law would work in Helena in respect to the skateboard park. **REP. HARPER** stated that there isn't much this bill could do for the person who was caught in the wrong place at the wrong time. The benefit of the bill is that it sets out a different category for crimes of desecration of these kinds of places. This is a clear and strong message to our young people that these places are different. They are sacred and should not be damaged.

Closing by Sponsor:

REP. HARPER closed on HB 492. He added that in the House Judiciary Committee the testimony was unanimous. The Mayor of Helena supported this bill. The thoughts and wishes were expressed that this could be the beginning of a new understanding between the skateboarders and the Veterans. We hope to be able to build on this opportunity to begin a new understanding.

{Tape : 1; Side : A; Approx. Time Counter : 9.40}

HEARING ON HB 203

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: Beth Baker, Department of Justice
Mike McGrath, Lewis and Clark County Attorney -
County Attorneys Association

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, explained that the purpose of the bill, before the amendments, was to place all assaults that constituted a felony under the felony assault statute. Under misdemeanor assault, there was one assault called assault of felony instead of felony assault where a misdemeanor committed by a person 18 years or older upon a person who was 14 years or younger was a felony. This is still a felony and has been moved to the assault statute dealing with felonies.

The sale of dangerous drugs is defined as bartering, giving, selling, etc. The only language change is from selling dangerous drugs to distributing dangerous drugs. Distributing dangerous drugs is then defined as barter, selling, etc. If a person gives his friend a dangerous drug, he hasn't sold the drug. This is similar to federal statute.

Recently the Supreme Court dealt with weapons as used in the statutes. In one instance a minor placed a phony bomb in a school. The amendments provided by the Attorney General's Office will make it clear that even a make believe bomb, if represented as a bomb, is a weapon for purposes of the assault statute.

Felony assault is an assault committed with a weapon. The penalty is ten years. It has become customary to add another 10 years for the use of a weapon. This would add up to 10 years for felony assault and a 10 year enhancement for using a weapon. The Supreme Court held that this was double jeopardy. The proposal is to make felony assault a crime with a 20 year penalty. This is not mandatory but is available to a judge if he deems necessary.

{Tape : 1; Side : B; Approx. Time Counter : 9.43}

Proponents' Testimony:

Beth Baker, Department of Justice, provided amendments, EXHIBIT(1). These amendments address two recent decisions of the Supreme Court. Both amendments deal with the felony assault statute. The first amendment, page 3 - line 15, clarifies that if a person causes reasonable apprehension of serious bodily injury in another by use of a weapon or what reasonably appears to be a weapon, the person will be guilty of felony assault. In the case decided on February 24th, a student of a middle school placed a device, which appeared to be a bomb, under a bathroom sink in the restroom. Five different people saw the device, believed it to be a bomb, and were afraid for their safety. Exercising appropriate caution, the school called in the police bomb squad who removed and destroyed the bomb. At trial, there was no evidence whether the bomb was real or fake. The youth claimed it was fake, but because it had been destroyed no one could tell. Currently the definition of a weapon in Section 45-2-101, requires proof that the article or instrument be readily capable to being used to produce death or serious bodily injury.

If someone used a fake pistol for a hold up, they could not be convicted of felony assault. This amendment will clear up that problem in the law.

The second amendment increases the penalty for felony assault from 10 to 20 years. This was addressed in the letter from **Judge G. Todd Baugh, Thirteenth Judicial District, EXHIBIT(2)**. In this Supreme Court case the defendant had been charged with felony assault for causing reasonable apprehension of serious bodily injury by use of a weapon. He received a sentence of 10 years under the felony assault statute and an additional 5 year sentence under the weapon enhancement statute which allows an additional sentence of between 2 and 10 years for any person who has been found guilty of an offense and who while engaged in the commission of the offense knowingly used a dangerous weapon. The Court held that because the dangerous weapon was required to be proven as an element of the offense, the weapon enhancement statute could not be applied to that person since this would violate double jeopardy. Since felony assault, under the previous scheme, could have been punished for up to 20 years, this will restore and place this under one statute so the double jeopardy problem will not occur.

Mike McGrath, Lewis and Clark County Attorney - County Attorneys Association, conveyed that when a person is charged with felony assault when they have committed that offense by using a weapon, state law requires the judge to impose an additional sentence from two to ten years under Section 46-18-222. The amendment would allow the court to give a longer sentence when appropriate.

Opponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 9.50}

Questions from Committee Members and Responses:

SEN. BARTLETT asked why there would continue to be a distinction in the statutory language between felony assault and aggravated assault if the penalties were the same. **Mr. McGrath** responded that he would like to see a revision of the assault statutes to make this clarification. He added that the enhanced penalty provision is a mandatory provision and makes it very difficult to get pleas in certain assault cases. In the instance of a neighbor dispute or a dispute where a person has no violent history whatsoever but a gun is involved and is used, it may not be appropriate for this individual to go to prison. Under the current enhancement requirements, before the court tossed them out, we were required to send that person to Montana State Prison. Defendants are reluctant to plead guilty if they know it is mandatory that they go to prison.

SEN. BARTLETT asked **REP. SHOCKLEY** if he had any concerns with not retaining a distinction between felony assault and aggravated assault in the statute. She added that this bill may need a

fiscal note because it is an increase in the penalty and may have a fiscal impact on the prison population since the penalty is doubled. **REP. SHOCKLEY** believed that it would not increase the burden on the Department of Corrections because the practice has been to use the 10 year enhancement statute. The enhancement is mandatory.

Ms. Baker remarked that in regard to the penalty for aggravated assault, if a change was made it would be necessary to deal with the three-strikes statute because that includes aggravated assault as one of the offenses for three strikes. Felony assault is not one of the offenses. This is one of the most substantive difference between the two types of assault.

SEN. BARTLETT questioned whether aggravated assault was included because it had at least a 20 year penalty or whether it was included due to the nature of the crime. **Ms. Baker** responded that it would be reasonable to assume that it was due to the nature of the crime because aggravated assault requires proof of serious bodily injury whereas felony assault can be just apprehension of injury. **SEN. BARTLETT** added that may be a reason not to eliminate the distinction.

{Tape : 1; Side : B; Approx. Time Counter : 9.58}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 203. He added that the amendments proposed are reasonable. He believes that a felony assault, in certain circumstances, should have a 20-year maximum and the judge should have this discretion. He also believes that something that appears to be a weapon should be treated as a weapon if it puts people in fear.

{Tape : 1; Side : B; Approx. Time Counter : 10.02}

HEARING ON HB 204

Sponsor: **REP. JIM SHOCKLEY, HD 61, Victor**

Proponents: **Thomas Olson, Bozeman District Judge**
Robert Throssell, Montana Magistrates Association

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, introduced HB 204. This bill raises the maximum civil jurisdiction in justice court from

Amendments to House Bill No. 203
3rd Reading Copy

Requested by Representative Jim Shockley

For the Senate Judiciary Committee

Prepared by Beth Baker Dept. of Justice
Put into Council form by Valencia Lane
March 10, 1999 (8:41AM)

1. Title, line 5.

Following: "DRUGS;"

Insert: "CHANGING THE PENALTY FOR FELONY ASSAULT;"

2. Page 3, line 25.

Following: "weapon"

Insert: "or what reasonably appears to be a weapon"

3. Page 4, line 9.

Following: "exceed"

Strike: "10"

Insert: "20"

- END -



STATE JUDICIAL CLERK
CASE NO. 2
DATE 3-11-99
FILE # 15203

State of Montana Thirteenth Judicial District

POST OFFICE BOX 35042 BILLINGS, MONTANA 59107
(406) 256-2922

G. TODD BAUGH
DISTRICT JUDGE - DEPT. 5

March 1, 1999

BIGHORN COUNTY
CARBON COUNTY
STILLWATER COUNTY
YELLOWSTONE COUNTY

Representative Daniel W. McGee
1925 Pinyon Drive
Laurel, MT 59044

Dear Representative McGee:

As of February 24, 1999, when the Supreme Court denied *In The Matter of R.L.S.*, Supreme Court Docket No. 98-494, things which only appear to be readily capable of causing death or serious bodily injury, but in reality are not what they appear to be, are no longer, in Montana, weapons. This means that fake bombs (maybe defective bombs), unloaded guns, toy guns, toy knives and other things that appear to be real weapons but are not actually readily capable of being used to produce death or serious bodily injury will no longer support a charge of felony assault, no matter what the victims think. Assaults committed with these kinds of things will now be charged, I expect, mostly as misdemeanor assaults.

In another recent case, the Supreme Court decided that the weapons use sentencing enhancement is not constitutional. This means that felony assaults wherein a weapon is used carry a maximum sentence of ten years, whereas before the Supreme Court ruling the maximum was twenty years.

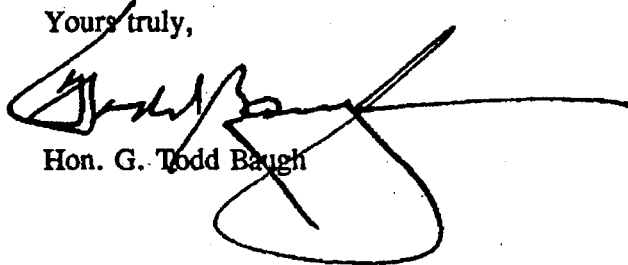
The only way to address these matters at this time is for the legislature to act. If the legislature wants to make it a felony to commit assaults with things that appear for all practical purposes to be weapons even though they are only realistic looking toys, are not loaded, are fake, are defective, or otherwise not functional and not readily capable of causing death or serious injury, the legislature needs to amend the definition of weapon at § 45-2-101(76) M.C.A. I suggest the addition of "or reasonably appears to be so capable."

If the legislature wants felony assaults with a weapon to be punishable by twenty years as has been the case since at least 1981, instead of ten years, as has been the case for the last week or two since the Supreme Court ruled, the legislature needs to amend the sentencing provisions for felony assault at § 45-5-202 M.C.A.

March 1, 1999
Page Two

I know the legislature is busy, over-worked and under paid and I am given to understand that the time for presenting legislation such as I have called to your attention is past. Nonetheless, I am sure that if enough of you think this is important enough, you can address it.

Yours truly,

A handwritten signature in black ink, appearing to read "G. Todd Baugh", with a long horizontal stroke extending to the right and a large loop at the bottom.

Hon. G. Todd Baugh

GTB:pb

cc: Supreme Court
Attorney General
Yellowstone County Attorney

DATE 3-11-99

[illegible]

DATE 3-11-99

SENATE COMMITTEE ON HB 203, HB 204, HB 209, HB 492

BILLS BEING HEARD TODAY: Judiciary

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Robert AC Perry	458-6317	DAV VVA MCL	492	✓	
Rick Salyer	449 9719	Dept of Justice	492	✓	
Dan Cochrane	449-0106	U.S. Navy Veterans	492	✓	
Marty Lambert	582-2145	City of Bozeman	209		X
Mike Hankins	442-0025	Marine Corps League "The Chosin Few"	492	✓	
Marie E Durkee	442-5040	First Special Soc. Bozeman	492	✓	
HERB GOODWIN	442-2851	First Special Soc. Bozeman	492	✓	
Joe Upshaw	442-5956	163rd Inf Civilian Aide, Secretary of Army	492	✓	
Roy C. WAHL	442-0561	163rd INF	492	✓	
Beth Baker	444-2026	Dept of Justice	203	✓	
MAICE McCole	444-3228	Montana Attorney	492	✓	
THOMAS OLSON	582-2160	District Court (Bozeman)	204	✓	
HAL MANSON	458-9228	AMERICAN Legion	HB 492	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-11-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 203, HB 204, HB 209, HB 492

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
LARRY LONGFELLOW	445-6124	✓ FCD	HB 492	✓	
Dennis Paxinos	252-2870	Yllwstne Co	203	✓	
Charles Beards	442-2415	Yellowstone CO	HB 204		
Robert Throssell	442-0230	MT MAGISTRATES ASSN.	HB 204	✓	
Dennis Paxinos	252-2870	Yllwstn Co	HB 209	✓	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB
527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB
257, HB 308, HB 374, HB 382,
HB 396

HEARING ON HB 374

Sponsor: REP. JOAN HURDLE, HD 13, Billings

Proponents: Allen Horsfall, Montana Board of Crime Control
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

issue put into the Departments amendments in the case of an unconditional discharge. She added that **SEN. BARTLETT'S** amendments took out the unconditional discharge, thereby eliminating the need for that amendment.

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON HB 203

Motion/Vote: SEN. BARTLETT moved that AMENDMENT HB020303.AVL, EXHIBIT(6), BE CONCURRED IN. Motion carried 8-0.

Motion/Vote: SEN. BARTLETT moved that HB 203 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 27.5 - 36.2}

EXECUTIVE ACTION ON HB 257

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED.

Motion/Vote: SEN. HALLIGAN moved that AMENDMENT HB025701.AVL, EXHIBIT(7), BE CONCURRED IN. Motion carried 8-0.

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN GROSFIELD asked if this bill is essentially a sentence enhancement. There was no response offered for the record.

Vote: Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 36.2 - 43.2}

EXECUTIVE ACTION ON HB 527

Discussion:

SEN. HALLIGAN asked Mr. Browning if he had considered requiring the interlock system after the third and subsequent offense rather than the second. Mr. Browning remarked that originally it was to be required after the first offense if the individuals BAC level was above 0.18. The determination to have it apply to second and subsequent offences was that the first offense would be discretionary.

SEN. HALLIGAN asked why the judges are not using this now. Mr. Browning said that the problem is the lack of awareness. The expense has not entered into the discussion as a problem.

Amendments to House Bill No. 203
3rd Reading Copy

Requested by Senator Sue Bartlett

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 19, 1999 (8:38AM)

1. Title, line 5.

Following: "DRUGS;"

Insert: "CREATING THE OFFENSE OF ASSAULT ON A MINOR; RENAMING
"FELONY ASSAULT" TO "ASSAULT WITH A WEAPON" AND INCREASING
THE PENALTY FOR THE OFFENSE;"

Following: "SECTIONS"

Insert: "40-15-102,"

2. Title, line 6.

Following: "41-5-206,"

Insert: "45-5-102,"

Following: "45-5-202,"

Insert: "45-5-206, 45-5-627, 45-8-405,"

Following: "46-18-201,"

Insert: "46-18-219,"

3. Title, line 7.

Following: "46-18-231,"

Insert: "46-23-502,"

4. Page 1, line 10.

"Section 1. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A
person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily
injury by the petitioner's partner or family member as defined in
45-5-206; or

(b) the petitioner is a victim of one of the following
offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-
206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in [section 5];

(viii) assault with a weapon as defined in [section 7];

Exhibit # _____

From _____

The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

Page 1 of 14 pages
amendment & bill draft

ROLL CALL

3-23-99

[illegible]



SENATE STANDING COMMITTEE REPORT

March 23, 1999

Page 1 of 10

Mr. President:

We, your committee on **Judiciary** report that **House Bill 203** (third reading copy -- blue) be concurred in as amended.

Signed:

Lorentz Grosfield
Senator Lorents Grosfield, Chair

To be carried by Senator Sue Bartlett

And, that such amendments read:

1. Title, line 5.

Following: "DRUGS;"

Insert: "CREATING THE OFFENSE OF ASSAULT ON A MINOR; RENAMING
"FELONY ASSAULT" TO "ASSAULT WITH A WEAPON" AND INCREASING
THE PENALTY FOR THE OFFENSE;"

Following: "SECTIONS"

Insert: "40-15-102,"

2. Title, line 6.

Following: "41-5-206,"

Insert: "45-5-102,"

Following: "45-5-202,"

Insert: "45-5-206, 45-5-627, 45-8-405,"

Following: "46-18-201,"

Insert: "46-18-219,"

3. Title, line 7.

Following: "46-18-231,"

Insert: "46-23-502,"

4. Page 1, line 10.

"Section 1. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A

Committee Vote:

Yes 8, No 0.

651629SC.sjo

person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in [section 5];

(viii) assault with a weapon as defined in [section 7];

~~(vii)~~ (ix) unlawful restraint as defined in 45-5-301;

~~(viii)~~ (x) kidnapping as defined in 45-5-302;

~~(ix)~~ (xi) aggravated kidnapping as defined in 45-5-303; or

~~(x)~~ (xii) arson as defined in 45-6-103.

(2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Renumber: subsequent sections

5. Page 1, line 26.

Following: "aggravated"

Strike: "or felony"

6. Page 1, line 27.

Following: "line 26"

Insert: "(iv) assault with a weapon as defined in [section 7];"

Renumber: subsequent subsections

7. Page 3, line 6.

"Section 3. Section 45-5-102, MCA, is amended to read:

"45-5-102. **Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, ~~felony assault~~ assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

Renumber: subsequent sections

8. Page 3, line 19.

Insert: "NEW SECTION. **Section 5. Assault on minor.** (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.

(2) A person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than \$50,000, or both."

Renumber: subsequent sections

9. Page 3, line 21.

Strike: "-- felony assault"

10. Page 3, line 23 through page 4, line 4.

Strike: subsections (2) and (3) in their entirety

Renumber: subsequent subsection

11. Page 4, line 5.

Strike: "(a)"

12. Page 4, line 7.

Following: "46-18-222." on line 7

Strike: remainder of line 7 through "45-5-206(4)." on line 14

13. Page 4, line 15.

Insert: "NEW SECTION. Section 7. Assault with weapon. (1) A person commits the offense of assault with a weapon if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon; or

(b) reasonable apprehension of serious bodily injury in another by use of a weapon or what reasonably appears to be a weapon.

(2)(a) Subject to the provisions of subsection (2)(b), a person convicted of assault with a weapon shall be imprisoned in the state prison for a term not to exceed 20 years or be fined not more than \$50,000, or both.

(b) In addition to any sentence imposed under subsection (2)(a), if the person convicted of assault with a weapon is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4)."

"Section 8. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault -- penalty.

(1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall

be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for felony assault with a weapon under ~~45-2-202~~ [section 7], if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and

counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

"Section 9. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor -- exceptions -- penalty.

(1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, assault on a minor, or felony assault with a weapon against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the

victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

"Section 10. Section 45-8-405, MCA, is amended to read:

"45-8-405. **Pattern of criminal street gang activity.** (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

- (a) deliberate homicide, as defined in 45-5-102;
- (b) ~~felony assault with a weapon~~, as defined in ~~45-5-202~~ [section 7];
- (c) intimidation, as defined in 45-5-203;
- (d) kidnapping, as defined in 45-5-302;
- (e) aggravated kidnapping, as defined in 45-5-303;
- (f) robbery, as defined in 45-5-401;
- (g) sexual intercourse without consent, as defined in 45-5-503;
- (h) aggravated promotion of prostitution, as defined in 45-5-603;
- (i) criminal mischief, as defined in 45-6-101;
- (j) arson, as defined in 45-6-103;
- (k) burglary, as defined in 45-6-204;
- (l) theft, as defined in 45-6-301;
- (m) forgery, as defined in 45-6-325;
- (n) tampering with witnesses and informants, as defined in 45-7-206;
- (o) bringing armed men into the state, as defined in 45-8-106;
- (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;
- (q) carrying a concealed weapon, as defined in 45-8-316;
- (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;
- (s) possession of a destructive device, as defined in 45-8-334;
- (t) possession of explosives, as defined in 45-8-335;
- (u) possession of a sawed-off firearm, as defined in 45-8-340;
- (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;
- (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

Renumber: subsequent sections

14. Page 9, line 11.

Following: "45-5-202~~(3)~~"

Strike: "(4) relating to aggravated assault"

15. Page 10, line 12.

"Section 17. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release.

(1) (a) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-102, deliberate homicide;
- (ii) 45-5-303, aggravated kidnapping;
- (iii) 45-5-503, sexual intercourse without consent;
- (iv) 45-5-625, sexual abuse of children; or
- (v) 45-5-627, except subsection (1)(b), ritual abuse of a

minor.

(b). Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- (i) 45-5-103, mitigated deliberate homicide;
- (ii) 45-5-202~~(1)~~, aggravated assault;
- (iii) 45-5-302, kidnapping;
- (iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, a person sentenced under subsection (1):

- (a) shall serve the entire sentence;
- (b) shall serve the sentence in prison;
- (c) may not for any reason, except medical reasons, be transferred for any length of time to another type of institution, facility, or program;
- (d) may not be paroled; and
- (e) may not be given time off for good behavior or

otherwise be given an early release for any reason.

(3) If the person was previously sentenced for either of two or three offenses listed in subsection (1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the person's present sentence.

(4) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Renumber: subsequent sections

16. Page 10, line 18.

Following: "45-5-202(3)"

Strike: "(4)"

Insert: ", [section 7]"

17. Page 10, line 30.

"Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental

abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), [section 5], [section 7], 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Renumber: subsequent section

18. Page 11, line 8.

Insert: "NEW SECTION. Section 21. Codification instruction.

[Sections 5 and 7] are intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [sections 5 and 7]."

- END -